

MT LEGISLATIVE HISTORY

Chapter 189 1977

Bill H (S) 43

Original bill & hist. ✓ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 08 ✓ C

Hearing Date(s) Jan 12 ✓ C

Mar 10 ✓ C

Jan 20 ✓ C

 C

 C

 C

 C

Date Out C

Jan 20 ✓ C

Did this bill originate in an interim committee? Yes No

Committee

Report

1 *Senate* BILL NO. *43*
2 INTRODUCED BY *Case Turner*
3 *(Interm Judiciary Committee Bill)*
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO SPECIFICALLY PROVIDE
5 THE STATE, COUNTIES, TOWNS, AND ALL OTHER LOCAL GOVERNMENT
6 ENTITIES AND THE OFFICERS, AGENTS, AND EMPLOYEES OF THOSE
7 ENTITIES IMMUNITY FROM SUIT FOR INJURY TO A PERSON OR
8 PROPERTY IN CERTAIN CASES IN ACCORDANCE WITH THE PROVISIONS
9 OF ARTICLE II, SECTION 18 OF THE CONSTITUTION OF THE STATE
10 OF MONTANA; AMENDING SECTION 82-4310, R.C.M. 1947."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 82-4310, R.C.M. 1947, is amended to
14 read as follows:
15 "82-4310. Governmental entities liable for torts
16 ~~except as specifically provided by the legislature.~~ Every
17 governmental entity is subject to liability for its torts
18 and those of its employees acting within the scope of their
19 employment or duties whether arising out of a governmental
20 or proprietary function ~~except as specifically provided by~~
21 ~~the legislature under Article II, section 18 of the~~
22 ~~Constitution of the State of Montana."~~
23 Section 2. Immunity from suit for legislative acts and
24 omissions. (1) As used in this section:
25 (a) the term "governmental entity" includes the state,

1 counties, municipalities, and school districts;
2 (b) the term "legislative body" includes the
3 legislature vested with legislative power by Article V of
4 The Constitution of the State of Montana and any local
5 governmental entity given legislative powers by statute,
6 including school boards.
7 (2) A governmental entity is immune from suit for an
8 act or omission of its legislative body or a member,
9 officer, or agent thereof.
10 (3) A member, officer, or agent of a legislative body
11 is immune from suit for damages arising from the lawful
12 discharge of an official duty associated with the
13 introduction or consideration of legislation or action by
14 the legislative body.
15 (4) The immunity provided for in this section does not
16 extend to any tort committed by the use of a motor vehicle,
17 aircraft, or other means of transportation.
18 Section 3. Immunity from suit for judicial acts and
19 omissions. (1) The state and other governmental units are
20 immune from suit for acts or omissions of the judiciary.
21 (2) A member, officer, or agent of the judiciary is
22 immune from suit for damages arising from his lawful
23 discharge of an official duty associated with judicial
24 actions of the court.
25 (3) The judiciary includes those courts established in

1 accordance with Article VII of The Constitution of the State
2 of Montana.

3 Section 4. Immunity from suit for certain
4 gubernatorial actions. The state and the governor are immune
5 from suit for damages arising from the lawful discharge of
6 an official duty associated with vetoing or approving bills
7 or in calling sessions of the legislature.

8 Section 5. Immunity from suit for certain actions by
9 local elected executives. A local governmental entity and
10 the elected executive officer thereof are immune from suit
11 for damages arising from the lawful discharge of an official
12 duty associated with vetoing or approving ordinances or
13 other legislative acts or in calling sessions of the
14 legislative body.

15 Section 6. State or other governmental entity immune
16 from exemplary and punitive damages. The state and other
17 governmental entities are immune from exemplary and punitive
18 damages.

19 Section 7. Actions under invalid law or rule -- same
20 as if valid -- when. (1) If an officer, agent, or employee
21 of the state or of a county, municipality, taxing district,
22 or other political subdivision of the state acts in good
23 faith, without malice or corruption, and under the authority
24 of law and that law is subsequently declared invalid as in
25 conflict with the constitution of Montana or the

1 constitution of the United States, neither he nor any other
2 officer or employee of the governmental entity he
3 represents, nor the governmental entity he represents, is
4 civilly liable in any action in which he, such other
5 officer, or such governmental entity would not have been
6 liable had the law been valid.

7 (2) If an officer, agent, or employee of the state, or
8 of a county, municipality, taxing district, or other
9 political subdivision of the state acts in good faith,
10 without malice or corruption, and under the authority of a
11 duly promulgated rule or ordinance and that rule or
12 ordinance is subsequently declared invalid, neither he nor
13 any other officer, agent, or employee of the governmental
14 unit he represents, nor the governmental entity he
15 represents, is civilly liable in any action in which no
16 liability would attach had the rule or ordinance been valid.

17 Section 8. Limitation on governmental liability for
18 damages in tort -- petition for relief in excess of limits.
19 (1) Neither the state, a county, municipality, taxing
20 district, nor any other political subdivision of the state
21 is liable in tort action for:

22 (a) noneconomic damages; or
23 (b) economic damages suffered as a result of an act or
24 omission of an officer, agent, or employee of that entity in
25 excess of \$300,000 for each claimant and \$1 million for each

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1 occurrence.

2 (2) The legislature or the governing body of a county,
3 municipality, taxing district, or other political
4 subdivision of the state may authorize payments for economic
5 damages in excess of the sum authorized in subsection (1)(b)
6 of this section upon petition of plaintiff following a final
7 judgment.

8 (3) As used in this section:

9 (a) "economic damages" means tangible pecuniary
10 losses;

11 (b) "noneconomic damages" means those damages not
12 included in economic, punitive, or exemplary damages
13 including, without limitation, damages for pain and
14 suffering, loss of consortium, mental distress, and loss of
15 reputation.

16 Section 9. Severability. If a part of this act is
17 invalid, all valid parts that are severable from the invalid
18 part remain in effect. If a part of this act is invalid in
19 one or more of its applications, the part remains in effect
20 in all valid applications that are severable from the
21 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 564-77

FISCAL NOTE

Form BD-1.

In compliance with a written request received February 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 43 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to specifically provide the state, counties, towns, and all other local government entities and the officers, agents, and employees of those entities immunity from suit for injury to a person or property in certain cases in accordance with the provisions of Article II, Section 18 of the Constitution of the State of Montana.

ASSUMPTIONS:

1. Liability insurance under current law will cost approximately \$1,500,000 in FY 78 and \$1,740,000 in FY 79.
2. Under current law, no limit exists on the liability to the state or its subdivisions.
3. Under the proposed law, maximum exposure is \$1,000,000 per occurrence, excluding noneconomic damages (pain, suffering, etc.)
4. Under current policy coverage, the state is insured to \$1,000,000 per occurrence including noneconomic damages.
5. Noneconomic damages represent nearly 40% of the amount of all claims filed against the state.
6. Given the limits provided in the proposed law, it is assumed that policy costs could be reduced up to 25%; however, there have been no commitments by the insurance companies.

FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Estimated reduction in insurance costs due to proposed legislation	<u>\$375,000</u>	<u>\$435,000</u>

The above cost reduction would be allocated to all funds contributing to the purchase of liability insurance, to include the General Fund.

LOCAL IMPACT:

No detailed estimates can be provided as to the fiscal impact on local government, but the proposed law should result in trends and cost savings similar to that which the state would realize.

LONG-RANGE EFFECT:

The proposed legislation will significantly reduce the risk exposures of governmental entities, resulting in reduced insurance costs.


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-24-77

FORTY-FIFTH LEGISLATIVE SESSION

1977

COMMITTEE ON JUDICIARY

BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CON- CURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CON- CURRED IN DATE
S.B. 9	1-3-77	1-11-77	1-15-77			1-15-77			
S.B. 12	1-3-77	2-16-77	2-18-77			2-18-77			
S.B. 20	1-3-77	1-7-77	1-7-77			1-7-77			
S.B. 23	1-11-77	1-18-77	1-29-77		1-29-77				
S.B. 23	Rereferred 2-1-77	2-4-77				2-4-77			
S.B. 27	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 30	1-3-77	1-11, 1-13, 1-17-77	1-17-77			1-20-77			
S.B. 32	1-3-77	Duplicate of S.B. 40	2-10-77		2-10-77				
S.B. 33	1-3-77	1-11 & 1-14-77	2-17-77			2-17-77			
S.B. 34	1-3-77	1-17, 1-18, 1-28, 1-29-77	1-31-77			1-31-77			
S.B. 37	1-4-77	1-14-77	2-10-77			2-10-77			
S.B. 40	1-5-77	1-12-77	1-20-77	1-20-77					
S.B. 41	1-5-77	1-12 & 1-20-77	2-18-77			2-18-77			
S.B. 42	1-5-77	1-12 & 1-20-77	1-20-77	1-20-77					
S.B. 43	1-5-77	1-12 & 1-20-77	1-20-77			1-20-77			
S.B. 53	1-6-77	1-12 & 1-20-77	1-20-77	1-20-77					

(Use Separate Sheet for Senate, House Bills, and Resolutions)

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 12, 1977

The meeting of the Judiciary Committee was called to order by Chairman Jean Turnage on the above date in Room 442 of the State Capitol Building.

ROLL CALL:

All members were present with the exception of Senator Roberts who was excused. Senator Warden was excused at 10:00 a.m. as she had to testify at another meeting.

The following witnesses were present to testify:

Representative John Vincent - District 78
Glen Drake, Helena attorney - Montana League of Cities and Towns and the American Insurance Association
Gregg McCurdy - Montana Association of Counties
W. Boyce Clarke - Independent Insurance Agents of Montana
Arnold Kuenning - Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana
Mike Young, Attorney - Department of Administration
Bob Biggerstaff - Montana Association of Conservation Districts
Gregg Morgan, Bozeman attorney - Montana State Bar Association
Robert Corcoran, Chief Tax Counsel - Montana Department of Revenue
William L. Romine - Montana attorney
John Bell, Helena - attorney

CONSIDERATION OF SENATE BILLS 40, 41, 42, 43 and 53:

Senator Towe requested that the bills be taken up in the following order: S.B. 43, 53, 41, 42 and 40. The request was granted by Chairman Turnage. Sen. Towe noted S.B. 32 is identical to S.B. 43.

Senator Towe then explained each bill in the above order. While doing this, he told the committee that these bills, in order to pass, would require a two-thirds vote by each House. This is an exception to the general rule governing sovereign immunity.

Representative Vincent, appearing as a proponent of S.B. 43, stated that he supported this bill with one exception and that is relative to the limits in subsection (b) on pages 4 and 5. He offered the committee two suggested alternatives which he thought would improve the bill. He was then thanked by the Chairman for his testimony.

Other proponents of the bills appearing and offering testimony to the committee were:

Glen Drake, Helena attorney, representing the American Insurance Association and the Montana League of Cities and Towns;

Gregg McCurdy, representing the Montana Association of Counties, who had one question on S.B. 43, page 5, line 3, regarding the words "taxing districts";

W. Boyce Clarke, representing the Independent Insurance Agents of Montana, who presented a prepared statement on each bill to the committee (see attached). Mr. Clarke also commended the subcommittee and their staff on doing a very good job on these bills.

Arnold Kuenning, an Insurance Consultant representing the Independent Insurance Agents of Montana and the Mutual Agents of Montana. Mr. Kuenning presented the committee with a prepared statement. (See attachment)

Mike Young, Attorney for the Montana Department of Administration;

Bob Biggerstaff, representing the Montana Association of Conservation Districts, who said that they are proponents but are concerned that they might not be included.

Gregg Morgan of the State Bar Association said that they wished to applaud the committee and support the work done.

Opponents appearing were:

Bob Corcoran, representing Bill Groff, Director of the Department of Revenue, who said the Department of Revenue was concerned with a couple of items in the bills, namely, in Title 84 the portion referring to claims of refunds of taxes and the portion on quiet title actions in S.B. 40. Senator Towe said that was just a deletion of language.

Bill Romine, attorney, representing only himself. Mr. Romine presented the committee with a prepared statement on S.B. 41. (Attached)

At this time, Gregg Morgan of the State Bar of Montana testified before the committee, suggesting amendments or withdraw S.B. 41 as it may be unconstitutional as a breach of contract. (See Exhibit 1)

John Bell, a Helena attorney who said he believes S.B. 41 is clearly unconstitutional.

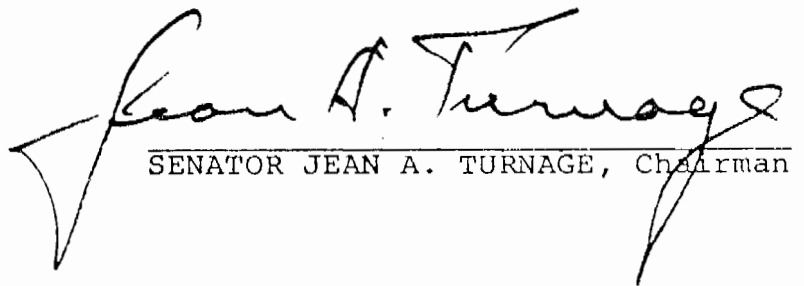
Mike Young, Attorney for the Montana Department of Administration, at this time said that his previous comments were only in regard to S.B. 43, 53 and 40.

At this time, Chairman Turnage explained S.B. 41, stating that it was the last bill worked up by the subcommittee, and that the committee should hear from the bill's originator, Rep. Herb Huennekens, on it.

Senator Towe told the committee that he definitely thanked the researchers who worked on this and that the study is a great credit to the Legislative Council and its staff.

The Chairman asked for questions of committee members.

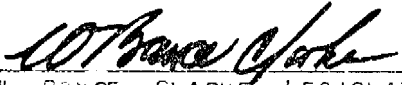
There being no further business, the committee adjourned at 10:47 a.m. to reconvene January 13, 1977, at 9:30 a.m. in Room 442.


SENATOR JEAN A. TURNAGE, Chairman

SENATE BILL NO. 43

COMMENT:

AGAIN, REPRESENTING MEMBERS OF THE INDEPENDENT INSURANCE AGENTS
OF MONTANA, WE CONCUR WITH THE FINDINGS OF THE SUB-COMMITTEE AND RECOMMEND
PASSAGE.


W. BOYCE CLARKE, LEGISLATIVE COUNSEL
INDEPENDENT INSURANCE AGENTS OF MONTANA

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Statement of Arnold Kuenning, licensed Insurance Consultant engaged by the Independent Insurance Agents of Montana and also the Mutual Agents of Montana, to service the insurance programs of the State:

We support the governmental immunity legislation being proposed, namely Senate Bills 40 through 43. No other state has taken quite the same approach to "sovereign" immunity as Montana, and this fact leaves our legislature almost without guidelines in making needed modifications. Therefore, it has seemed wise to use caution and careful study in setting new standards. It is quite evident that the Sovereign Immunity study committee created by the 1975 legislature has done just that during the past two years in developing these bills, particularly Senate Bill 43, and we commend them for their efforts.

We hope that these will alleviate some of the potential dangers of unlimited and unrestricted immunity, so that the State and its subdivisions can deal more effectively with tort claims. This is true whether they are assuming the risks of liability themselves or transferring them to others through the medium of insurance.

Our experience of recent years in attempting to find markets for insurance of all kinds makes us quite hesitant to predict whether any given risk will be easier or harder to insure tomorrow. There are still no clear answers for Montana or for any other state on what will make public lines attractive to insurance carriers, as there are many factors which influence insurance marketing. However, we are hopeful that this legislation will be a step toward easing the problem.

* * * * *

Although we have not had time to thoroughly consider Senate Bill 53, which is related to the immunity amendments, we agree that some action of this nature is required to give the State the flexibility needed to maintain a realistic balance between assumed risk and insured risk.

11

ROLL CALL

JUDICIARY COMMITTEE

45th LEGISLATIVE SESSION - - 1977

Date 1/12/77

NAME	PRESENT	ABSENT	EXCUSED
TURNAGE, Jean, Chairman	✓		
ROBERTS, Joe, Vice-Chairman	✓		Exc
MURRAY, William	✓		
OLSON, Stuart	✓		
LENSINK, Everett	✓		
REGAN, Pat	✓		
TOWE, Tom	✓		
WARDEN, Margaret	✓		Exc 10:00

Each day attach to minutes.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
January 20, 1977

The meeting of this committee was called to order by Senator Turnage, Chairman, at 9:30 a.m. on the above date in Room 442 of the State Capitol building.

ROLL CALL:

All members of the committee were present for this meeting.

WITNESSES PRESENT TO TESTIFY:

Senator Thiessen - District 27
Claire Engel - State Law Librarian
John Northey, staff attorney - office of Legislative Auditor
Senator Thomas - District 20
Sharon Dieziger - Montana Nurses Association
Mary Mouat - St. Peters Hosp./Montana Nurses Assn.

CONSIDERATION OF SENATE BILL 92:

Senator Thiessen, sponsor of S.B. 92 along with Senator Turnage, presented the bill and explained it to the committee. He said this bill is an outgrowth of the post-legislative session audit committee and that the law librarian is appointed by the Supreme Court.

Claire Engel, state law librarian, told the committee that S.B. 92 is simply an attempt to rid the law of obsolete laws.

John Northey, staff attorney for the Legislative Auditor's office, told the committee that, if any of them wanted a more detailed explanation of the bill, he would be glad to provide it for them.

There were no opponents to the bill present.

DISPOSITION OF SENATE BILL 92:

Senator Towe moved that Senate Bill 92 DO PASS. Motion carried unanimously.

CONSIDERATION OF SENATE BILL 95:

Senator Thomas explained to the committee that this bill provides for limited immunity for peer review for nurses and lpn's. He offered the amendment attached. (Exhibit #1)

Sharon Dieziger, representing the Montana Nurses Association, testified on the bill, giving the committee a written statement (See Exhibit #2) and supporting the proposed amendment.

13

Chairman Turnage asked her if she had seen Senate Bill 58. Ms. Diezinger said that she did not feel it covered everything contained in S.B. 95.

There were no opponents to this bill present.

In answer to questions of the Chairman regarding the definition of peer review committee and audit committee, Mary Mouat of St. Peters Hospital and the Montana Nurses Assn., said that a peer review committee deals with somebody within your own profession and that the audit committee is one set up to deal with specific problems and would set certain standards of care. She further testified that the audit committee is not covered by a peer review committee.

At this time, Chairman Turnage told the witnesses that the committee would ask for the return of Senate Bill 58 and try to make one bill which would be acceptable to them. He assigned Senators Olsen and Lensink to work on this matter. The witnesses were then thanked for appearing and excused.

DISPOSITION OF SENATE BILLS 40, 41, 42, 43 and 53:

SENATE BILL 43 - Senator Towe moved to amend page 5, section 8, line 4, following "may" by inserting ", in its sole discretion," and following "for" by inserting "noneconomic damages or";

And to further amend page 5, section 8, on line 6, following "section" by inserting ", or both,";

And to further amend page 5, section 8, on line 7, following "judgment." by inserting "No insurer is liable for such noneconomic damages or excess economic damages unless specifically authorized in the contract of insurance."

The above motion carried unanimously.

Senator Towe then moved that Senate Bill 43, as amended, DO PASS. The motion carried unanimously.

SENATE BILL 53 - Senator Towe moved DO PASS. The motion carried unanimously.

SENATE BILL 41 - Senator Lensink moved DO NOT PASS. As a substitute motion, Senator Regan moved to pass consideration for the day. The substitute motion of Senator Regan carried on a vote of 5 - 3. (See attached voting record)

The Chairman assigned a subcommittee of one, namely, Senator Regan, to research S.B. 41 and report back in about ten days.

JUDICIARY COMMITTEE

Date _____

4/20/17

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STANDING COMMITTEE REPORT

January 20, 1977

MR. PRESIDENT:

We, your committee on JUDICIARY

having had under consideration SENATE Bill No. 43

Respectfully report as follows: That SENATE Bill No. 43, the introduced bill, be amended as follows:

1. Amend page 5, section 8, line 4.

Following: "may"

Insert: ", in its sole discretion,"

Following: "for"

Insert: "noneconomic damages or"

2. Amend page 5, section 8, line 6.

Following: "section"

Insert: ", or both,"

3. Amend page 5, section 8, line 7.

Following: "judgment."

Insert: "No insurer is liable for such noneconomic damages or excess economic damages unless specifically authorized in the contract of insurance."

AND AS SO AMENDED, DO PASS.

~~DO PASS~~

JUDICIARY COMMITTEE

45th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 560	require the dept of natural resources and conservation to study cooney dam, the dam spillway etc.	1-27	Burnett	Tues 1	"WATER" do not pass	2-16
HB 573	to provide for the use of navigable waters in Mont.. for recreational purposes, etc.	1-27	Huennekens	Thursday 3rd 10 a.m.	"WATER" do pass as amended	2-9
SB 42	to continue certain immunities from suit established by certain statutes by reenacting the statutes, etc.	1-27	Towe	March 8	concurred in	3-10
SB 43	provide state, counties, towns, other local gvt. entities and the officers agents, employees, etc. immunity from suit,	1-27	Towe	March 8	concurred in	3-10
SB 53	authorize establishment of self-insurance programs for state & local gvt with guidelines, etc. judgments against, etc.	1-27	Towe	March 8	concurred in amended	3/22
HB 559	to submit to the qualified electors of Montana an amendment etc. const. age of majority to 19 years	1-27	Teague	Thursday 3rd	do pass	2-7

SENATE BILL NO. 43

INTRODUCED BY TOWE, TURNAGE

(INTERIM JUDICIARY COMMITTEE BILL)

A BILL FOR AN ACT ENTITLED: "AN ACT TO SPECIFICALLY PROVIDE THE STATE, COUNTIES, TOWNS, AND ALL OTHER LOCAL GOVERNMENT ENTITIES AND THE OFFICERS, AGENTS, AND EMPLOYEES OF THOSE ENTITIES IMMUNITY FROM SUIT FOR INJURY TO A PERSON OR PROPERTY IN CERTAIN CASES IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE II, SECTION 18 OF THE CONSTITUTION OF THE STATE OF MONTANA; AMENDING SECTION 82-4310, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4310, R.C.M. 1947, is amended to read as follows:

"82-4310. Governmental entities liable for torts except as specifically provided by the legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18 of the Constitution of the State of Montana."

Section 2. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" includes the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards.

(2) A governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof.

(3) A member, officer, or agent of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with the introduction or consideration of legislation or action by the legislative body.

(4) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation.

Section 3. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court.

THIRD READING

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

Section 4. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

Section 5. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

Section 6. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

Section 7. Actions under invalid law or rule -- same as if valid -- when. (1) If an officer, agent, or employee of the state or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in

conflict with the constitution of Montana or the constitution of the United States, neither he nor any other officer or employee of the governmental entity he represents, nor the governmental entity he represents, is civilly liable in any action in which he, such other officer, or such governmental entity would not have been liable had the law been valid.

(2) If an officer, agent, or employee of the state, or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, neither he nor any other officer, agent, or employee of the governmental unit he represents, nor the governmental entity he represents, is civilly liable in any action in which no liability would attach had the rule or ordinance been valid.

Section 8. Limitation on governmental liability for damages in tort -- petition for relief in excess of limits.

(1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:

(a) noneconomic damages; or

(b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in

1 excess of \$300,000 for each claimant and \$1 million for each
2 occurrence.

3 (2) The legislature or the governing body of a county,
4 municipality, taxing district, or other political
5 subdivision of the state may, IN ITS SOLE DISCRETION,
6 authorize payments for NONECONOMIC DAMAGES OR economic
7 damages in excess of the sum authorized in subsection (1)(b)
8 of this section, OR BOTH, upon petition of plaintiff
9 following a final judgment. NO INSURER IS LIABLE FOR SUCH
10 NONECONOMIC DAMAGES OR EXCESS ECONOMIC DAMAGES UNLESS
11 SPECIFICALLY AUTHORIZED IN THE CONTRACT OF INSURANCE.

12 (3) As used in this section:

13 (a) "economic damages" means tangible pecuniary
14 losses;

15 (b) "noneconomic damages" means those damages not
16 included in economic, punitive, or exemplary damages
17 including, without limitation, damages for pain and
18 suffering, loss of consortium, mental distress, and loss of
19 reputation.

20 Section 9. Severability. If a part of this act is
21 invalid, all valid parts that are severable from the invalid
22 part remain in effect. If a part of this act is invalid in
23 one or more of its applications, the part remains in effect
24 in all valid applications that are severable from the
25 invalid applications.

-End-

-5-

SB 43

JUDICIARY COMMITTEE
March 8, 1977

The regular meeting of the House Judiciary Committee was held on Tuesday, March 8 at 7:30 a.m. in room 436 of the Capitol Building, Helena, Montana. Chairmam Scully presided. All members were present with the exception of Representative Colburn.

Scheduled for hearing were Senate Bills 40, 42, 43 and 53.

SENATOR TOWE, sponsor of the bills asked that Senate Bill 41 be included, since it is part of the package of bills. The committee agreed to hear this bill along with the others.

SENATOR TOWE:

These bills are part of the interim study. The new Montana constitution spelled out that there would be no sovereign immunity. He discussed the reason for sovereign immunity and how it came about, the fact that in common law the king could do no wrong. He explained the insurance and the \$25,000 deductible. The bills dealing with constitutional amendments must have 2/3 of the legislature voting in order to pass. He said he felt the approach to drafting the bills was somewhat unique. We are preserving the right to sue, however we are limiting the amount of damages in some instances. Each of the bills does a separate thing which I will explain.

1. #43 is the main bill.
2. #53 is the 2nd bill and involves a self-insurance fund.
3. #41 sets a limit on attorneys fees.
4. #42 reinserts certain portions of the constitution.
5. #40 is a clean-up or repealer.

First, #43. He discussed the tangible and intangible, the economic and non-economic things you can sue for. The non-economic is not allowed for.

#53 is the self-insurance bill. It allows for a deductible self-insurance program and reserve. He explained the sources and stated that if the judgment cannot be paid from these four sources it cannot be paid.

#41 regulates the attorneys fees. The attorney must file a claim. The district court may regulate the amount of the attorneys fee.

#42 concerns the constitutional amendments needed. One of the existing things in the law that allow someone to sue are invalid in the new constitution. They must be reinstated with a 2/3 vote.

#40 repeals and revises certain sections of the law. He went through the bill and explained the general practice of law.

The Senator said that SB 42 and 43 need 2/3 vote in order to pass. He wished to remind the committee of this. The Senator also said they had not found anyone opposed to any of these bills.

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PROPONENT MIKE YOUNG, DEPARTMENT OF STATE ADMINISTRATION:

We would like to thank the committee for the amount of time they have spent. As a practical matter we will still insure for the same amount of money which is 1 million dollars. We favor the bills.

PROPONENT, GLEN DRAKE, LEAGUE OF CITIES & TOWNS & AMERICAN INSURANCE CORPORATION:

We are in support of the bills.

PROPONENT, GREG McCURDY:

I am in favor of the bills.

PROPONENT, BOISE CLARK, INDEPENDENT INSURANCE AGENTS:

I would like to reiterate the fine work that has been done by the sub-committee. There are just a couple of comments I want to make. He talked about the study on government liability risks. Attached is a copy of the testimony on each of the bills by Mr. Clark.

REPERSENTATIVE KEYSER:

on page 8 of SB 53, how long can the state or county delay making the payment.

SENATOR TOWE:

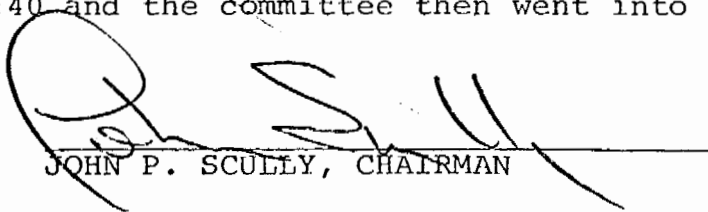
The payment may be delayed but if there is an abuse in any area, we may have to put in an amendment to change that.

REPRESENTATIVE EUDALLY and SENATOR TOWE:

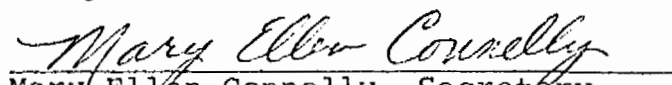
discussion about the special levy up to 10 mills. Discussion about the insurance costs and how the reduced liability might reduce the price.

No further questions the hearing closed on the series of bills.

The meeting adjourned at 8:40 and the committee then went into executive session.



JOHN P. SCULLY, CHAIRMAN



Mary Ellen Connelly, Secretary

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JUDICIARY COMMITTEE

Executive session
March 10, 1977

The executive session followed the regular meeting of the House Judiciary committee on Thursday, March 10 at 8:30 a.m. in room 436 of the Capitol Building, Helena, Montana. Members absent and not voting were Representatives Dussault and Kennerly.

SENATE BILL #41:

REPRESENTATIVE LORY moved "be concurred in".
The motion carried with the vote unanimous.

SENATE BILL #42:

REPRESENTATIVE CONROY moved "be concurred in".
The motion carried with Representative Hand voting "no".

SENATE BILL #43:

REPRESENTATIVE RAMIREZ moved "be concurred in".
The motion carried with the vote unanimous.

SENATE BILL #53:

REPRESENTATIVE LORY moved "be concurred in".
Representative Eudaily reported what he had found out on the school fund. There is a special school fund in budgets for liability coverage. That would make it possible for them to set up this fund and levy this millage. There is no reserve fund but the schools feel this can be set up. After additional discussion it was decided to pass consideration for the day until the members had more time to study the bill.

SENATE BILL #58:

REPRESENTATIVE EUDAILY moved "be concurred in".
A general discussion followed about what this bill does.
The question was called and the motion carried with the vote unanimous.

SENATE BILL #119:

REPRESENTATIVE KEYSER moved "be concurred in".
Representative Ramirez moved to amend a section he was concerned about. A discussion followed about workmen's compensation and how this bill would be affected by the portion dealing with that subject. Representative Ramirez withdrew his motion and the original motion was back in force. The question was called and the motion carried with the vote unanimous.

SENATE BILL #176:

REPRESENTATIVE LORY moved "be concurred in".
The motion carried with Representative Day voting "no".

SENATE BILL #215:

REPRESENTATIVE CONROY moved "be concurred in".
The motion carried with the vote unanimous.

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Chairman Scully assigned the following representatives to carry the respective senate bills as follows:

Senate Bill 40	Representative Lory
Senate Bill 41	Representative Lory
Senate Bill 42	Representative Lory
Senate Bill 43	Representative Lory
Senate Bill 58	Representative Scully
Senate Bill 119	Representative Keyser
Senate Bill 176	Representative Day
Senate Bill 215	Representative Conroy or Roth

The meeting adjourned at 9:00 a.m. so the water sub-committee could meet.


JOHN P. SCULLY, CHAIRMAN


Mary Ellen Connelly, Secretary

SENATE BILL NO. 43

INTRODUCED BY TOWE, TURNAGE

(INTERIM JUDICIARY COMMITTEE BILL)

A BILL FOR AN ACT ENTITLED: "AN ACT TO SPECIFICALLY PROVIDE THE STATE, COUNTIES, TOWNS, AND ALL OTHER LOCAL GOVERNMENT ENTITIES AND THE OFFICERS, AGENTS, AND EMPLOYEES OF THOSE ENTITIES IMMUNITY FROM SUIT FOR INJURY TO A PERSON OR PROPERTY IN CERTAIN CASES IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE II, SECTION 18 OF THE CONSTITUTION OF THE STATE OF MONTANA; AMENDING SECTION 82-4310, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 82-4310, R.C.M. 1947, is amended to read as follows:

"82-4310. Governmental entities liable for torts except as specifically provided by the legislature. Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function except as specifically provided by the legislature under Article II, section 18 of the Constitution of the State of Montana."

Section 2. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" includes the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards.

(2) A governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof.

(3) A member, officer, or agent of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with the introduction or consideration of legislation or action by the legislative body.

(4) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation.

Section 3. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court.

REFERENCE BILL

1 (3) The judiciary includes those courts established in
2 accordance with Article VII of the Constitution of the State
3 of Montana.

4 Section 4. Immunity from suit for certain
5 gubernatorial actions. The state and the governor are immune
6 from suit for damages arising from the lawful discharge of
7 an official duty associated with vetoing or approving bills
8 or in calling sessions of the legislature.

9 Section 5. Immunity from suit for certain actions by
10 local elected executives. A local governmental entity and
11 the elected executive officer thereof are immune from suit
12 for damages arising from the lawful discharge of an official
13 duty associated with vetoing or approving ordinances or
14 other legislative acts or in calling sessions of the
15 legislative body.

16 Section 6. State or other governmental entity immune
17 from exemplary and punitive damages. The state and other
18 governmental entities are immune from exemplary and punitive
19 damages.

20 Section 7. Actions under invalid law or rule -- same
21 as if valid -- when. (1) If an officer, agent, or employee
22 of the state or of a county, municipality, taxing district,
23 or other political subdivision of the state acts in good
24 faith, without malice or corruption, and under the authority
25 of law and that law is subsequently declared invalid as in

1 conflict with the constitution of Montana or the
2 constitution of the United States, neither he nor any other
3 officer or employee of the governmental entity he
4 represents, nor the governmental entity he represents, is
5 civilly liable in any action in which he, such other
6 officer, or such governmental entity would not have been
7 liable had the law been valid.

8 (2) If an officer, agent, or employee of the state, or
9 of a county, municipality, taxing district, or other
10 political subdivision of the state acts in good faith,
11 without malice or corruption, and under the authority of a
12 duly promulgated rule or ordinance and that rule or
13 ordinance is subsequently declared invalid, neither he nor
14 any other officer, agent, or employee of the governmental
15 unit he represents, nor the governmental entity he
16 represents, is civilly liable in any action in which no
17 liability would attach had the rule or ordinance been valid.

18 Section 8. Limitation on governmental liability for
19 damages in tort -- petition for relief in excess of limits.
20 (1) Neither the state, a county, municipality, taxing
21 district, nor any other political subdivision of the state
22 is liable in tort action for:

23 (a) noneconomic damages; or
24 (b) economic damages suffered as a result of an act or
25 omission of an officer, agent, or employee of that entity in

1 excess of \$300,000 for each claimant and \$1 million for each
2 occurrence.

3 (2) The legislature or the governing body of a county,
4 municipality, taxing district, or other political
5 subdivision of the state may, IN ITS SOLE DISCRETION,
6 authorize payments for NONECONOMIC DAMAGES OR economic
7 damages in excess of the sum authorized in subsection (1)(b)
8 of this section, OR BDIH, upon petition of plaintiff
9 following a final judgment. NO INSURER IS LIABLE FOR SUCH
10 NONECONOMIC DAMAGES OR EXCESS ECONOMIC DAMAGES UNLESS
11 SPECIFICALLY AUTHORIZED IN THE CONTRACT OF INSURANCE.

12 (3) As used in this section:

13 (a) "economic damages" means tangible pecuniary
14 losses;

15 (b) "noneconomic damages" means those damages not
16 included in economic, punitive, or exemplary damages
17 including, without limitation, damages for pain and
18 suffering, loss of consortium, mental distress, and loss of
19 reputation.

20 Section 9. Severability. If a part of this act is
21 invalid, all valid parts that are severable from the invalid
22 part remain in effect. If a part of this act is invalid in
23 one or more of its applications, the part remains in effect
24 in all valid applications that are severable from the
25 invalid applications.

-End-

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